

Title 292 WAC

ETHICS IN PUBLIC SERVICE

Chapters

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- 292-09** Agency procedural rules.
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DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

Chapter 292-08

AGENCY ORGANIZATION—CONFIDENTIALITY

- 292-08-010** Purpose. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-010, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-08-020** Function. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-020, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-08-030** Definitions. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-030, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-08-040** Organization. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-040, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-08-050** Confidentiality provisions. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-050, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

Chapter 292-12

PROCEDURAL RULES

- 292-12-010** Preliminary investigation. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-010, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-020** Initial proceedings. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-020, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-030** Statement of charges. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-030, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-040

Fact-finding hearing. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-040, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-050

Disqualification of fact-finder. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-050, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-060

Procedural rights of judge. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-060, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-070

Guardian ad litem. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-070, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-080

Discovery procedure before fact-finding. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-080, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-090

Amendments to statement of charges or answer. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-090, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-110

Procedure at fact-finding hearing. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-110, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-120

Report of fact-finder. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-120, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-130

Commission decision. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-130, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-140

Additional evidence. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-140, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-150

Supreme court procedures. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-150, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-160

Reinstatement of eligibility. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-160, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

292-12-170	Extension of time. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-170, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
292-12-180	Service. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-180, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

Chapter 292-09 WAC

AGENCY PROCEDURAL RULES

WAC

292-09-010	Purpose of this chapter.
292-09-020	Role of the commission on judicial conduct.
292-09-030	Organization of the commission on judicial conduct.
292-09-040	Definitions.
292-09-050	Complaints and investigations.
292-09-060	Determination of reasonable cause.
292-09-070	Respondent's answer to complaint.
292-09-080	Stipulated dispositions.
292-09-090	Adoption of model rules of procedure.
292-09-100	Presiding officer.
292-09-110	Discovery.
292-09-120	Discovery—Authority of presiding officer.
292-09-130	Fact-finding hearing.
292-09-140	Documents—Filing.
292-09-150	Witness fees.
292-09-160	Subpoenas.
292-09-170	Judicial review.

WAC 292-09-010 Purpose of this chapter. The purpose of this chapter is to provide rules implementing the Ethics in Public Service Act (chapter 42.52 RCW) according to procedures prescribed in Article IV, Section 31, of the Constitution of the state of Washington and chapter 2.64 RCW for the commission on judicial conduct.

All proceedings involving state employees of the judicial branch of state government, except "judges" as defined in *Commission On Judicial Conduct Rules of Procedure (CJCRP)*, shall proceed under the rules set forth in this chapter. All proceedings involving "judges" as defined in RCW 2.64.010 and the Code of Judicial Conduct shall proceed exclusively under the rules set forth in the *CJCRP*.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 97-13-069, § 292-09-010, filed 6/18/97, effective 7/19/97; 95-05-031 (Order 95-01), § 292-09-010, filed 2/8/95, effective 3/11/95.]

WAC 292-09-020 Role of the commission on judicial conduct. The commission on judicial conduct is constitutionally created to investigate and consider complaints concerning judges. The commission also has jurisdiction to investigate and consider complaints of violations of the Ethics in Public Service Act (chapter 42.52 RCW) or rules adopted under it, concerning state employees of the judicial branch.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-020, filed 2/8/95, effective 3/11/95.]

WAC 292-09-030 Organization of the commission on judicial conduct. Six members of the commission must be present to take action at a commission business meeting. The adoption of or amendment to the rules of the commission

shall require the affirmative vote of six members of the commission.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-030, filed 2/8/95, effective 3/11/95.]

WAC 292-09-040 Definitions.

In these rules:

"Adjudicative proceeding" means a proceeding before the commission in which the person involved is given notice and an opportunity to be heard after a determination of reasonable cause that a violation of chapter 42.52 RCW or rules adopted under it has been or is being committed.

"Administrative law judge" means a person assigned by the office of administrative hearings in accordance with chapter 34.12 RCW and appointed by the commission to hear and take evidence with respect to charges against a state employee of the judicial branch.

"Commission" means the commission on judicial conduct.

"Complainant" means the organization, association, or person who makes a complaint alleging violation of chapter 42.52 RCW or rules adopted under it.

"Complaint" means a written statement on a form provided by the commission alleging facts which may upon investigation lead to a finding of a violation of chapter 42.52 RCW or rules adopted under it.

"Determination" means a written statement finding that there is or that there is not reasonable cause to believe that a violation of chapter 42.52 RCW or rules adopted under it has been or is being committed.

"Employee" means a state employee or state officer (as defined in RCW 42.52.010) of the judicial branch of state government, except "judges" (as defined in RCW 2.64.010 and the Code of Judicial Conduct), or the employee's attorney, as the context suggests.

"Enforcement action" means the imposition of sanctions, which may include one or more of the following:

- A reprimand;
- A recommendation that the employing agency commence disciplinary action against an employee; and/or
- An order for payment of any damages, civil penalties, and/or costs as permitted by chapter 42.52 RCW.

Any order for payment shall also include a reprimand.

"Fact-finder" means the commission or an administrative law judge appointed by the commission.

"Hearing" means a public hearing conducted in an adjudicative proceeding.

"Investigative panel" means a four-member subcommittee of the commission consisting of two public members, a judge, and a lawyer. The investigative panel shall make all determinations concerning reasonable cause. The panel shall perform oversight functions for commission investigative and prosecutorial functions. Members who serve on the investigative panel shall not serve as the presiding officer at any hearing in the same proceeding.

"Meeting" means a business meeting of the commission for any purpose other than a public hearing or executive session involving the investigation or consideration of a complaint.

"Member" means a member of the commission and includes alternates acting as members.

"Public member" means a member of the commission who is neither a lawyer nor a judge.

"Reprimand" means an enforcement action of the commission that finds that the conduct of the respondent violates chapter 42.52 RCW or rules adopted under it. A reprimand may include a requirement that the respondent follow a specified corrective course of action. The commission shall issue a written reprimand and may require the respondent to appear personally before the commission for a public reading of the reprimand. The commission shall provide a copy of the reprimand to the respondent's employing agency.

"Respondent" means a state employee of the judicial branch who is the subject of a complaint, or the employee's attorney, as the context suggests.

"Staff" means the employees, or others under personal service contract or agreement, engaged to perform commission duties and to exercise commission powers.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-040, filed 2/8/95, effective 3/11/95.]

WAC 292-09-050 Complaints and investigations. (1) Any organization, association, or person, including a member of the commission, may make a complaint to the commission alleging violation of chapter 42.52 RCW or rules adopted under it. A complaint shall be made in writing on a form provided by the commission. A complaint may be made personally or by the complainant's attorney.

(2) Upon receipt of a complaint, the commission staff shall investigate and evaluate the allegations. The investigation shall be limited to the facts alleged in the complaint. On every complaint received, the commission staff shall make a written recommendation that there is or that there is not reasonable cause to believe that a violation of chapter 42.52 RCW or rules adopted under it has been or is being committed. The investigative panel shall make a written determination whether there is reasonable cause based upon the complaint and the recommendation. A copy of the determination shall be provided to the complainant and to the respondent. If the determination concludes that there is no reasonable cause, a copy shall also be provided to the attorney general.

(3) Complaints pursuant to RCW 42.52.450 shall be investigated by the attorney general. As appropriate, pursuant to RCW 42.52.470, the investigative panel or the commission may refer a complaint to the employing agency, the attorney general, or the prosecutor.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-050, filed 2/8/95, effective 3/11/95.]

WAC 292-09-060 Determination of reasonable cause. If the investigative panel determines that reasonable cause exists that the respondent has violated chapter 42.52 RCW or rules adopted under it, the commission shall schedule a public hearing on the merits of the complaint.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-060, filed 2/8/95, effective 3/11/95.]

(1999 Ed.)

WAC 292-09-070 Respondent's answer to complaint. The respondent shall file a written answer to the complaint not later than thirty days after receipt of the determination that there is reasonable cause. Failure to file a written answer shall be deemed an admission to the facts alleged in the complaint and the determination.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-070, filed 2/8/95, effective 3/11/95.]

WAC 292-09-080 Stipulated dispositions. Any matter before the commission may be disposed of by a stipulation at any stage of the proceeding. The respondent and a member of the commission staff shall sign the stipulation before presentation to the commission. The commission may impose any terms and conditions deemed appropriate. If the stipulation is rejected by the commission, the stipulation shall be withdrawn and cannot be used by or against the respondent in any proceeding.

When a stipulation which disposes of a complaint is accepted by the commission, the commission shall provide a copy of the stipulation to the attorney general and the complainant.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-080, filed 2/8/95, effective 3/11/95.]

WAC 292-09-090 Adoption of model rules of procedure. Part IV—Adjudicative Proceedings—of chapter 34.05 RCW and the model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use by the commission. In the case of conflict between chapter 34.05 RCW or the model rules of procedure and procedural rules adopted in this chapter, the procedural rules adopted by the commission shall take precedence.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-090, filed 2/8/95, effective 3/11/95.]

WAC 292-09-100 Presiding officer. (1) In matters involving an adjudicative proceeding, the commission may designate as presiding officer a member of the commission, or an administrative law judge assigned by the office of administrative hearings under the authority of chapter 34.12 RCW.

(2) A person who has served as an investigator, prosecutor, or advocate in any stage of an adjudicative proceeding, or someone who is subject to the authority or direction of such a person, may not serve as a presiding officer in the same proceeding.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-100, filed 2/8/95, effective 3/11/95.]

WAC 292-09-110 Discovery. The statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used where applicable unless in conflict with this chapter.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-110, filed 2/8/95, effective 3/11/95.]

WAC 292-09-120 Discovery—Authority of presiding officer. The presiding officer may permit discovery in an adjudicative proceeding. The presiding officer shall have the power to control the frequency and nature of discovery permitted and to order conferences to discuss discovery issues.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-120, filed 2/8/95, effective 3/11/95.]

WAC 292-09-130 Fact-finding hearing. (1) Upon filing of a determination of reasonable cause, a public fact-finding hearing will be scheduled at a location and time selected by the commission. The respondent shall have at least twenty days notice of the hearing and shall appear at the hearing in person, with or without counsel.

(2) Where there is a possibility that the respondent may be liable for a total amount of penalty and costs of more than five hundred dollars, the respondent may choose to have an administrative law judge conduct the hearing. The respondent shall indicate such choice in writing within thirty days after receipt of the determination. Notwithstanding the respondent's choice, the commission may, on its own initiative, retain an administrative law judge.

(3) Testimony taken at the hearing shall be under oath and recorded.

(4) The case in support of the complaint shall be presented at the hearing by commission staff. After the staff's case in chief, the respondent shall have the opportunity to present evidence. Both parties shall have the opportunity to cross-examine witnesses.

(5) If, based upon a preponderance of the evidence, the fact-finder finds that the respondent has violated chapter 42.52 RCW or rules adopted under it, the fact-finder shall file an order stating findings of fact, conclusions, and an enforcement action.

(6) If, based upon all the evidence, the fact-finder finds that the respondent has not engaged in an alleged violation of chapter 42.52 RCW or rules adopted under it, the fact-finder shall file an order stating findings of fact, conclusions, and an order dismissing the complaint.

(7) Civil penalties included within an enforcement action shall be established based upon the following nonexclusive aggravating and mitigating factors:

(a) Whether the violation is an isolated instance or evidences a pattern of conduct;

(b) The nature, extent, and frequency of occurrence of the violation;

(c) Whether the employee acknowledged or recognized that the violation occurred;

(d) Whether the employee has evidenced an effort to change or modify the conduct that resulted in a violation;

(e) The length of service of the employee;

(f) Whether there have been prior violations of ethics rules by the employee;

(g) The effect the violation has upon the integrity and respect for the judiciary; and

(h) The extent to which the employee exploited the position to satisfy personal desires.

(8) If the fact-finder is not the commission, the decision shall be entered as an initial order. Unless the respondent or the commission's staff files a petition for review of an initial order within twenty days of service of the initial order, the commission may adopt the initial order as its final order without further notice to the respondent. If the commission, upon its own motion, determines that the initial order should be reviewed, notice shall be given to the respondent.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-130, filed 2/8/95, effective 3/11/95.]

WAC 292-09-140 Documents—Filing. Any document filed with the commission under the provisions of the Administrative Procedure Act, chapter 34.05 RCW; model rules of procedure, chapter 10-08 WAC; and this chapter shall be filed with the Commission on Judicial Conduct, 908 5th Avenue S.E., P.O. Box 1817, Olympia, WA 98507.

Unless otherwise required by law, filing of a document with the commission shall be made personally, by first class mail, by certified or registered mail, by commercial parcel delivery company, or by facsimile and same-day mailing or original showing same-day postmark. Filing shall occur within the period of time specified for filing by statute, rule, or order.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-140, filed 2/8/95, effective 3/11/95.]

WAC 292-09-150 Witness fees. All witnesses shall receive fees and expenses in the amount allowed by law for witnesses in the superior court. The person calling the witness shall be responsible for paying the witness's fees and expenses.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-150, filed 2/8/95, effective 3/11/95.]

WAC 292-09-160 Subpoenas. (1) **Investigative.** The commission may subpoena witnesses, compel their attendance, administer oaths, take testimony of a person under oath, or require production for examination of any books, accounts, records, certificates, or papers relating to any matter under investigation or in question before the commission. Subpoenas may be issued by any member of the commission.

(2) **Adjudicative.** Subpoenas shall be issued and enforced as provided by chapter 10-08 WAC, chapter 34.05 RCW, and chapter 42.52 RCW, as appropriate.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-160, filed 2/8/95, effective 3/11/95.]

WAC 292-09-170 Judicial review. Except as otherwise provided by law, judicial review of a commission order that a violation of chapter 42.52 RCW or rules adopted under it has occurred is governed by the provisions of chapter 34.05 RCW applicable to review of adjudicative proceedings.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-170, filed 2/8/95, effective 3/11/95.]

Chapter 292-10 WAC PUBLIC RECORDS

WAC

292-10-010	Purpose.
292-10-020	Public records available.
292-10-030	Records index.
292-10-040	Requests for public records.
292-10-050	Fees.
292-10-060	Statement of reasons for denial of public records request.
292-10-070	Protection of public records.

WAC 292-10-010 Purpose. The purpose of this chapter is to implement those provisions of RCW 42.17.250 through 42.17.340 relating to access to public records.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-010, filed 2/5/91, effective 3/8/91.]

WAC 292-10-020 Public records available. All commission public records are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 2.64.111 and 42.17.310. In accordance with chapter 256, Laws of 1990, work and home addresses of any person requesting in writing that their addresses be kept private because disclosure would endanger life, safety or property, shall be omitted from all documents in public files.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-020, filed 2/5/91, effective 3/8/91.]

WAC 292-10-030 Records index. The indexes developed by or for the agency shall be available to all persons under the same rules and under the same conditions as are applied to public records available for inspection and shall be available at the offices of the agency.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-030, filed 2/5/91, effective 3/8/91.]

WAC 292-10-040 Requests for public records. (1) All requests for inspection or copying made in person at the agency shall be made on a form substantially as follows:

REQUEST FOR PUBLIC RECORDS

Date..... Time

Name.....

Address.....

.....

Representing.....

Description of Records:

.....

.....

I certify that lists of names obtained through this request for public records will not be used for commercial purposes.

(1999 Ed.)

REQUEST FOR PUBLIC RECORDS

.....

.....

.....

.....

.....

.....

Signature

Number of copies
Number of pages
Per page charge \$
Total charge \$

(2) All requests made in person may be made to the agency at 908 E. 5th, Olympia, Washington, between the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding legal holidays.

(3) A request for inspection or copying of public records may be made by mail in a letter containing the following information:

- (a) The name and address of the person making the request;
- (b) The organization or group that the person represents;
- (c) The time of day and the calendar date on which the person wishes to inspect the public records;
- (d) A description of the public records requested;
- (e) A statement whether access to copying equipment is desired;
- (f) A phone number where the person can be reached in case the public records officer or designee needs to contact the person for further description of the material or any other reason;
- (g) A statement that the record will not be used for commercial purposes.

(4) All requests by mail should be received at the agency at least three business days before the requested date of inspection to allow the public records officer or designee to make certain the requested records are available and not exempt and, if necessary, to contact the person requesting inspection.

(5) The agency may in its discretion fill requests made by telephone.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-040, filed 2/5/91, effective 3/8/91.]

WAC 292-10-050 Fees. No fee shall be charged for inspection of public records. The agency may charge a reasonable fee, determined from time to time by the director, for providing copies. The fee shall be the amount necessary to reimburse the agency for its actual costs incident to such copying.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-050, filed 2/5/91, effective 3/8/91.]

WAC 292-10-060 Statement of reasons for denial of public records request. When the agency refuses, in whole or in part, a written request for inspection of any public record, it shall include a statement of the specific exemption authorizing the refusal and a brief explanation of how the exemption applies to the record withheld.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-060, filed 2/5/91, effective 3/8/91.]

WAC 292-10-070 Protection of public records. In order to protect the public records of the agency, the following guidelines shall be adhered to by any person inspecting such public records:

(1) No public records shall be removed from the agency's premises.

(2) Inspection of any public record shall be conducted in the presence of a designated agency employee.

(3) No public records may be marked or defaced in any manner during inspection.

(4) Public records which are maintained in a file or jacket, or chronological order, may not be dismantled except for purposes of copying and then only by commission director or designee.

(5) Access to file cabinets, shelves, and other storage areas with public records is restricted to office personnel, unless other arrangements are made with the commission director or designee.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-070, filed 2/5/91, effective 3/8/91.]

Chapter 292-11 WAC AGENCY SUBSTANTIVE RULES

WAC

292-11-010 Purpose of this chapter.
292-11-020 Definitions.

WAC 292-11-010 Purpose of this chapter. The purpose of this chapter is to provide substantive rules implementing the Ethics in Public Service Act (chapter 42.52 RCW). The substantive rules in this chapter are intended to apply to all state employees of the judicial branch of state government, including "judges" as defined in the *Commission On Judicial Conduct Rules of Procedure (CJCRP)*.

[Statutory Authority: RCW 42.52.180 (2)(b) and 42.52.370. 97-13-075, § 292-11-010, filed 6/18/97, effective 7/19/97.]

WAC 292-11-020 Definitions. (1) The term "measurable expenditure" as used in RCW 42.52.180 (2)(b) shall mean an expenditure or consumption of public resources having more than a de minimis cost and value.

(2) As used herein, the term "de minimis cost and value" shall refer to a cost and/or value of the actual use of public resources that is sufficiently small to be reasonably disregarded as negligible or trifling.

[Statutory Authority: RCW 42.52.180 (2)(b) and 42.52.370. 97-13-075, § 292-11-020, filed 6/18/97, effective 7/19/97.]

Chapter 292-100 WAC PROCEDURAL RULES

WAC

292-100-010 Initiation of complaint.
292-100-020 Complaint procedures—Status of complainant and others.
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WAC 292-100-010 Initiation of complaint. (1) A complaint alleging a violation of chapter 42.52 RCW may be filed by:

- (a) Any person;
- (b) The board;

(2) If a member of the board or the board's staff files a complaint in his or her individual capacity, the board member or staff member shall be disqualified from acting in his or her official capacity with regard to the disposition of that complaint.

(3) Other agencies may refer information about possible violations of chapter 42.52 RCW to the board for consideration. The board will file a complaint if appropriate.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-010, filed 10/30/96, effective 11/30/96.]

WAC 292-100-020 Complaint procedures—Status of complainant and others. (1) When a complaint has been filed with the board, neither the complainant, if other than board staff, nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the board. The staff shall give notice to the complainant of any open board hearings on the matter.

(2) The person or persons alleged in a complaint to have violated chapter 42.52 RCW, are respondents as to that complaint.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-020, filed 10/30/96, effective 11/30/96.]

WAC 292-100-030 Procedures for filing complaints.

(1) A complaint filed with the board shall be in writing on a form provided by the board and signed by the complainant. A complaint signed by the complainant may also be filed by the complainant's representative.

(2) A complaint shall include:

- (a) The complainant's name; except that the board may choose to issue a complaint based upon information provided by a person who refuses to be identified;
- (b) A statement of the nature of the alleged violation or violations, date, time and place of each occurrence and name of person or persons responsible; and

(c) All available documentation and other evidence including any witnesses to the violation which the complainant is able to supply to demonstrate a reason for believing that a violation of chapter 42.52 RCW, or the rules adopted under it has occurred.

(3) A complaint which is incomplete, or does not contain enough information to allege a violation of chapter 42.52 RCW, will not be accepted for filing.

(4) The board will not consider allegations in a properly filed complaint that fall outside the jurisdiction of the board.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-030, filed 10/30/96, effective 11/30/96.]

WAC 292-100-040 Investigation of complaints. (1) Upon acceptance of a complaint the board staff shall conduct an investigation.

(2) If board staff determine that a complaint alleges conduct which may violate a criminal statute, the staff shall refer the complaint to the appropriate prosecuting attorney or the Washington State Patrol and shall suspend their investigation until the prosecuting attorney or the Washington State Patrol responds as to whether criminal charges will be filed. If the prosecuting attorney elects to file criminal charges, no further action will be taken while the criminal case is pending. If the prosecuting attorney elects not to file criminal charges, board staff shall complete their investigation and follow the procedures set forth in these rules.

(3) During the course of the investigation, the board staff shall contact the respondent(s) and provide the respondent(s) with a copy of the complaint.

(4) It is the intent of the board that board staff who are investigating a complaint will work with the agency that employs the respondent, unless in the judgment of the investigator it will impede the investigation. During the course of the investigation, the board staff shall provide the agency that employs respondent a copy of the complaint.

(5) The board may refer a complaint to the agency that employs the respondent for investigation and recommendation of resolution. The referral will include a copy of the complaint and all supporting documentation and shall include a date for submission of the report and recommendation allowing at least 30 days. The agency receiving the referral may request additional time, if needed. During the course of the agency's investigation, the agency shall contact the respondent and provide the respondent with a copy of the complaint.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-040, filed 10/30/96, effective 11/30/96.]

WAC 292-100-050 Determination on reasonable cause. (1) Following the investigation, the board staff shall prepare a written investigation report and make a recommendation to the board on whether to find reasonable cause, including a recommendation as to whether the penalty may be greater than \$500.

(2) Upon receipt of the board staff's investigation report and recommendation, the board shall determine whether or not there is reasonable cause to believe that a violation of chapter 42.52 RCW has occurred.

(3) The board's reasonable cause determination shall be done in closed session.

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(4) If the board finds reasonable cause, the board shall consider whether the penalty for the alleged violation may be greater than \$500. If the board may wish to impose a penalty greater than \$500, the respondent may be given the option to have an administrative law judge conduct the hearing and rule on procedural and evidentiary matters. If the respondent is not given that option, the board may not impose a penalty greater than \$500. The board may, on its own initiative, choose to retain an administrative law judge to conduct any hearing.

(5) Upon receipt of an investigation report and recommendation on a complaint referred to the agency that employs the respondent for investigation, the board shall either:

(a) Reject the report and recommendation and initiate its own investigation; or

(b) Concur with the report and recommendation and either initiate a hearing if the recommended penalty is a monetary fine or refer the matter back to the referral agency for implementation of the recommendation, if the recommended penalty involves disciplinary action.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-050, filed 10/30/96, effective 11/30/96.]

WAC 292-100-060 Notice of hearing—Filing of answer. (1) Following the board's determination on reasonable cause, the board shall provide the complainant, the respondent and the agency that employs the respondent with a copy of the written determination on reasonable cause and with a copy of the board staff's written investigation report. If reasonable cause is found, the determination of reasonable cause shall include a statement of the alleged violations. Prior to scheduling a public hearing, the board shall provide the respondent with an explanation of the option to request that the hearing be conducted by an administrative law judge if the penalty for the alleged violation may be greater than \$500.

(2) Within 30 days of the issuance of the written determination on reasonable cause, the respondent shall file an answer which shall state his/her response to the alleged violations. The answer shall include either a request for or a waiver of the right to request an administrative law judge if the penalty for the alleged violation may be greater than \$500.

(3) The respondent shall be notified of the date of the hearing no later than 30 days before the hearing date.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-060, filed 10/30/96, effective 11/30/96.]

WAC 292-100-070 Investigation materials not disclosable during investigation. (1) It is the policy of the board during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.17.310 (1)(d). The investigation is not considered complete until the board has made its reasonable cause determination as to whether there is reasonable cause to believe a violation has occurred. If a public records request is made following the reasonable cause determination for any such record which implicates the privacy of an individual, written

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notice of the records request will be provided to the individual in order that such individual may request a protective order from a court under RCW 42.17.330.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-070, filed 10/30/96, effective 11/30/96.]

WAC 292-100-080 Investigation procedures—Subpoenas. (1) During the course of an investigation, the board, or any board member, may issue a subpoena directed to any person who is likely to possess information which is relevant and material to the investigation. The subpoena shall:

(a) Specifically describe the information which is sought, and

(b) Set forth a reasonable time and place for the production of the information, and

(c) Notify the person that if the information is not produced, the board will apply to the superior court for an appropriate order or other remedy. The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The board may issue a subpoena under RCW 42.52.390 to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, memorandums or other documents which the board deems relevant and material.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-080, filed 10/30/96, effective 11/30/96.]

WAC 292-100-090 Informal settlement—Cases resolvable by stipulation. (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any respondent may request settlement by notifying the staff of the board in writing.

(b) If settlement may be accomplished by negotiation, negotiations shall be commenced at the earliest possible time. Settlement may be concluded by:

(i) Stipulation of facts by the parties; or

(ii) Stipulation of facts, conclusions and penalty by the parties.

(2) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The stipulation shall be recited on the record at the hearing. The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing. If the board requests additional facts be presented, the matter shall be referred to the board staff for further investigation.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-090, filed 10/30/96, effective 11/30/96.]

WAC 292-100-100 Conduct of hearings. (1) A hearing shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW) and its supporting regulations (chapter 10-08 WAC), shall be followed unless modified by chapter 292-100 WAC.

(2) A hearing shall be conducted either by the board or by an administrative law judge. If an administrative law judge participates, either by request of a respondent or by request of the board, the board may choose to sit with the administrative law judge to hear the matter and to enter a final order at the conclusions of the proceedings; or to have the administrative law judge hear the matter alone and prepare an initial order for review by the board. If an administrative law judge sits with the board, he or she shall rule on procedural and evidentiary matters.

(3) After the hearing the board or administrative law judge may find that:

(a) Respondent(s) did not violate the act, as alleged, and dismiss the case; or

(b) Respondent(s) is (are) in apparent violation of chapter 42.52 RCW, the board's remedy would be inadequate and the matter should be referred to the appropriate law enforcement agency as provided in RCW 42.52.470.

(4) Following a hearing in which the board participates, the board

(a) Shall set forth in writing its findings of fact, conclusions of law and decision on the merits of the case; and

(b) Shall deliver, either in person or by mail, to each respondent, complainant and the agency that employs the respondent, a copy of the findings of fact, conclusions of law and decision.

(5) Following a hearing in which the board does not participate, the administrative law judge shall

(a) Set forth written findings of fact, conclusions of law and decision on the merits of the case in an initial order;

(b) Shall deliver, either in person or by mail to each respondent and board staff a copy of the findings of fact, conclusions of law and decision, including a statement of the right to request review of the initial order by the board.

(c) If neither the board staff nor the respondent files exceptions to the initial order within 20 days, the board may adopt the initial order as the final order of the board.

(d) Within 20 days of entry of the initial order, either the board staff or the respondent may file written exceptions to the initial order. Such exceptions shall be filed with the secretary to the board and served on all other parties. The board shall set a date for submission of written argument on the exceptions and shall notify the board staff and the respondent in writing.

(e) The board shall review the initial order, any exceptions and argument filed and shall issue a final order which shall be delivered, either in person or by mail, to the board staff and the respondent, complainant and the agency that employs the respondent.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-100, filed 10/30/96, effective 11/30/96.]

WAC 292-100-110 Prehearing conference—Rule.

(1) In any proceeding, the board chair or an administrative law judge upon his/her own motion or upon request by staff or the respondent or their qualified representative, may direct the staff or respondent to appear at a specified time and place for a conference to consider:

- (a) Simplification of issues;
- (b) The necessity of amendments to the hearing notice;
- (c) The possibility of obtaining stipulations, admissions of facts and of documents;
- (d) Limitation on the number of witnesses; and
- (e) Procedural and such other matters as may aid in the disposition of the proceeding.

(2) Prehearing conferences may be presided over by the chair or an administrative law judge.

(3) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(4) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference. If no objection to the order is filed with the presiding officer within seven days after the date the order is mailed, the order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-110, filed 10/30/96, effective 11/30/96.]

WAC 292-100-120 Hearings—Discovery—Subpoenas. (1) The board or a board member may issue subpoenas for discovery, subpoenas to persons to appear and give testimony, and may require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material and the board or presiding officer may issue protective orders as appropriate. Any party may issue subpoenas. All subpoenas must be filed with the board, together with proof of proper service, at least five days prior to the date of the hearing for which they are issued. Such subpoenas will issue and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120.

(2) The board, upon motion and before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(3) The attendance of witnesses and such production of evidence may be required from any place within the state of Washington to any location where a hearing is being conducted.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-120, filed 10/30/96, effective 11/30/96.]

WAC 292-100-130 Hearings—Discovery—Depositions and interrogatories—Right to take. Unless otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the hearing. The

attendance of witnesses to a deposition may be compelled by use of a subpoena. Depositions shall be taken only in accordance with this rule and the rules on subpoenas, except that staff and the respondent may stipulate to other arrangements.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-130, filed 10/30/96, effective 11/30/96.]

WAC 292-100-140 Hearings—Discovery—Depositions and interrogatories—Notice. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than seven days in writing to the board and all parties. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. On motion of a party to whom the notice is served, the board or its hearing officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-140, filed 10/30/96, effective 11/30/96.]

WAC 292-100-150 Depositions and interrogatories in hearings—Protection of parties and deponents. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the board or its designated hearing officer may order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or the board may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the board or its designated hearing officer may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed only upon the order of the board. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-150, filed 10/30/96, effective 11/30/96.]

WAC 292-100-160 Discovery—Production of documents and use at hearing. (1) Upon request by either the board or the staff or the respondent copies of all materials to be presented at the hearing shall be provided to the requester within seven days of the request but, for good cause shown, not less than three business days prior to the date of the hearing.

(2) When documents are to be offered into evidence at the hearing, the one offering the exhibit shall provide a minimum of seven copies, one for opposing party, one for each member of the board, and one for the board's legal advisor.

(3) If documentary evidence has not been exchanged prior to the hearing, the parties shall arrive at the hearing location in sufficient time before the time scheduled for the hearing for the purpose of exchanging copies of exhibits to be introduced.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-160, filed 10/30/96, effective 11/30/96.]

WAC 292-100-170 Brief enforcement hearings—

Authority. (1) The board may provide a brief enforcement hearing for violations of provisions in chapter 42.52 RCW in which the facts are undisputed, the violations appear to be relatively minor in nature, and a penalty no greater than \$500 will be assessed for the violations.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-170, filed 10/30/96, effective 11/30/96.]

WAC 292-100-180 Brief enforcement hearing—Pro-

cedure. (1) A brief enforcement hearing may be presided over by the chair, or a member of the board designated by the chair.

(2) When a violation is alleged, before taking action, the secretary of the board shall send the alleged violator notice, which shall include:

(a) Alleged violation;

(b) The maximum amount of the penalty which can be imposed at the hearing and the amount of any proposed fine; and

(c) Person's right to respond, within ten days, either in writing or in person to explain his/her view of the matter.

(3) At the time of the hearing if the presiding officer believes alleged violations are of such magnitude as to merit penalties greater than \$500, the presiding officer shall immediately adjourn the hearing and direct the matter be scheduled for an enforcement hearing by the full board or an administrative law judge.

(4) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty imposed and their right to request review by the board at the next scheduled board meeting.

(5) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-180, filed 10/30/96, effective 11/30/96.]

WAC 292-100-190 Brief enforcement hearing—

Administrative review procedures. (1) The board shall conduct a review of the initial order upon the written or oral request of a party if the board receives the request within twenty-one days after the service of the initial order.

(2) If the parties have not requested review, the board may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original

order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review shall be in writing stating the findings made, and the reasons for the decision, and notice that judicial review is available. The order on review shall be entered within twenty-one days after the date of the initial order or of the request for review, whichever is later.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-190, filed 10/30/96, effective 11/30/96.]

WAC 292-100-200 Reconsideration and review of decisions. (1) For purposes of this rule, "decision" means any findings, conclusions, order, or other action by the board which is reviewable by a court.

(2) A decision may be reconsidered only upon (a) the written request of a party or (b) the motion or written request of a board member who voted on the prevailing side when that decision was made.

(3) Such a request for reconsideration shall be served at the office of the board, or motion made, no later than ten days after service of the decision of which reconsideration is sought.

(4) A request or motion for reconsideration shall specify the grounds therefor.

(5) Upon being served with a decision, the respondent may treat that decision as final for the purpose of petitioning for judicial review. The board may not reconsider any decision after being served with a petition for judicial review.

(6) When a request for reconsideration is served, or motion made, enforcement of the decision of which reconsideration is sought shall be stayed and the decision shall not be final until the board has acted on the reconsideration.

(7) The board shall act on the reconsideration, at the next meeting at which it practicably may do so by: (a) Deciding whether to reconsider its decision, and (b) if it decides to do so, either affirming or amending its decision: Provided, That before a decision may be amended other than by lowering a penalty, the respondent shall be given notice and an opportunity to be heard if, and in the same manner, as required for the original decision.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-200, filed 10/30/96, effective 11/30/96.]

Chapter 292-110 WAC **AGENCY SUBSTANTIVE RULES**

WAC

292-110-010	Use of state resources.
292-110-020	Working hours.
292-110-030	Measurable expenditure.
292-110-050	Advisory opinions.
292-110-060	Compensation for outside activities and contracting with state agencies.

WAC 292-110-010 Use of state resources. (1) State officers and state employees are obligated to conserve and protect state resources for the benefit of the public interest, rather than their private interests. When use of state resources supports organizational effectiveness, is reasonable and of negligible cost, and does not violate an ethics law or this rule, such use would not undermine public trust and

confidence. Responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state officer and state employee, or with the state officer or state employee who authorizes such use.

(2) State officers or state employees may not use state resources including any person, money, or property under the officer's or employee's official control or direction or in his or her custody for private benefit or gain of the officer or employee or any other person. This prohibition does not apply to the use of public resources to benefit another person as part of the officer's or employee's official duties.

(3) Notwithstanding the prohibition in subsection (2) of this section, a state officer or employee may make occasional but limited use of state resources only if:

(a) There is no cost to the state; and

(b) The use of state resources does not interfere with the performance of the officer's or employee's official duties;

(c) The use is brief in duration and does not disrupt or distract from the conduct of state business due to volume or frequency; and

(d) The use does not compromise the security or integrity of state information or software;

(e) An agency may authorize a use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.

Example 1: An employee makes a local telephone call or sends an e-mail communication to his home to make sure his children have arrived home safely from school. This is not an ethical violation. There is no cost to the state, and because either the call or the e-mail is brief in duration, it does not interfere with the performance of official duties.

Example 2: An employee uses her agency computer to send electronic mail to another employee regarding the agenda for an agency meeting that both will attend. She also wishes the other employee a happy birthday. This is not an ethical violation. The personal message is de minimis and improves organizational effectiveness by allowing informal communication among employees.

Example 3: Every spring a group of employees meets during lunch to organize an agency softball team. The meeting is held in a conference room that is not needed for agency business during the lunch hour. This is not an ethical violation. There is no cost to the state and the meeting does not interfere with the performance of official duties because it is during a lunch hour.

Example 4: An agency determines that an evening class will enhance the job skills of an employee, and allows the employee to use her office computer to do homework. The employee prints her homework using the office printer and her own paper. This is not an ethical violation. The use of the office computer and printer will result in some cost to the state, but the cost is negligible and the employee is using her own paper. Because the class will enhance the employee's job skills, the effectiveness of the organization is improved. Since the activity takes place after working hours, it will not interfere with the performance of the employee's official duties.

(4) Occasional and limited use of state resources does not include the following private uses of state resources:

(a) Any use for the purpose of conducting an outside business;

(b) A use for the purpose of supporting, promoting, or soliciting for an outside organization or group unless provided for by law or authorized by an agency head or designee;

(c) Any campaign or political use;

(d) Commercial uses such as advertising or selling; or

(e) An illegal activity.

Example 5: An employee operates an outside business. Everyday she makes or receives five to ten business calls on her state telephone. All of the calls are local calls. This is an ethical violation. The employee is conducting a private business on state time, which is a cost to the state.

Example 6: After working hours, an employee uses the office computer and printer to prepare client billings for a private business using his own paper. This is an ethical violation. Although use of the office computer and printer may result in a negligible cost to the state, conducting a private business is an inappropriate use of state resources.

Example 7: An employee is active in a local PTA organization that holds fund-raising events to send children to the nation's capital. Although a parental contribution is expected, the more a parent raises, the less his or her contribution. An employee uses agency e-mail to solicit contributions for her child. This is an ethical violation. The employee is using state resources to further a private interest and to promote an outside organization.

(5) Use of state resources pursuant to subsections (3) and (4) of this section is subject to the following qualifications and limitations:

(a) A state officer or employee may not use state resources for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Such a use of state resources is not authorized by this rule and is specifically prohibited by RCW 42.52.180, subject to the exceptions in RCW 42.52.180(2).

(b) A state officer or employee may not make private use of any state property which has been removed from state facilities or other official duty stations, even if there is no cost to the state.

(c) A state officer or employee may not make private use of any state property which is consumable such as paper, envelopes or spare parts, even if the actual cost to the state is de minimis.

(d) A state officer or employee may use computers and electronic mail provided such use conforms to ethical standards under section three of this rule, and the prohibitions contained in section four.

(e) A state officer or employee may not make private use of state computers or other equipment to access computer networks or other data bases including, but not limited to, electronic mail and electronic bulletin boards for personal use unrelated to an official business purpose.

Example 8: Agency equipment includes a video tape player. One night an employee takes the machine home to watch videos of her family vacation. This is an ethical violation. Although there is no cost to the state an employee may not make private use of state equipment removed from state facilities or other official duty station.

Example 9: An employee is assigned to do temporary work in another city away from his or her usual duty station. To perform official duties the employee takes an agency laptop computer. While away, the employee uses the computer to do tax work for a private client. This is an ethical violation. Although it is permissible for an employee to use the laptop at a temporary duty station, it is not permissible for the employee to perform work related to his or her outside business on the laptop.

Example 10: An employee routinely uses the Internet to manage her personal investment portfolio and communicate information to her broker. This is an ethical violation. Use of the Internet is limited to official state business, and there is a cost to the state for the employee's time while he or she conducts personal business.

(6) In general, a state officer or employee may not make private use of state resources and then reimburse the agency so there is no actual cost to the state. However, the board recognizes that in some limited situations, such as officers or employees working at remote locations, a system of reimbursement may be appropriate. Any system of reimbursement must be established by the agency in advance and must result in no cost to the state. To be valid under this rule a reimbursement system must be approved by the board.

(7) Electronic mail, facsimile transmissions, and voice mail are technologies that may create an electronic record. This is what separates these from other forms of communication such as a telephone conversation. An electronic record is reproducible and is therefore not private. Such records may be subject to disclosure under the public disclosure law, or may be disclosed for audit or legitimate state operational or management purposes.

(8) State agencies are encouraged to adopt policies applying these principles to their unique circumstances. Nothing in this rule is intended to limit the ability of an agency to adopt policies that are more restrictive. However, violation of a more restrictive agency policy by itself will not constitute a violation of RCW 42.52.160, it would constitute a violation of agency policy.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.160(3). 98-08-054, § 292-110-010, filed 3/27/98, effective 4/27/98. Statutory Authority: RCW 42.52.160(3). 96-01-036, § 292-110-010, filed 12/13/95, effective 1/13/96.]

WAC 292-110-020 Working hours. (1) RCW 42.52.180(1) provides that no state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Facilities of an agency includes use of state officers or state employees during working hours. The purpose of the rule is to define the term "working hours" for officers and employees of the executive

branch of state government. The prohibition in RCW 42.52.180(1) only applies during working hours. Nothing in RCW 42.52.180(1) or this rule prohibits a state officer or state employee from assisting in a campaign during non-working hours. An officer or employee who assists in a campaign during non-working hours may not use any facilities of an agency.

(2) Some state officers and state employees occupy positions that have fixed schedules with the same beginning and ending times. For officers and employees with fixed schedules, working hours are the hours between the starting and ending times of their positions. Officers and employees with fixed schedules may not assist in a campaign during these fixed working hours, unless they are on a lunch break under section four of this rule or on annual leave under section five of this rule.

Example 1: An employee works for an agency open to the public during the hours of 8:00 a.m. to 5:00 p.m. The employee is in a position with a fixed schedule of Monday through Friday 8:00 a.m. to 5:00 p.m. The employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 8:00 a.m. or after 5:00 p.m. Monday through Friday or on Saturday or Sunday.

Example 2: An employee works for an agency open to the public during the hours of 8:00 a.m. to 5:00 p.m. Although the agency is open during the hours 8:00 a.m. to 5:00 p.m., the employee is in a position with a fixed schedule of Monday through Thursday 3:00 p.m. through 12:00 a.m. The employee's working hours are 3:00 p.m. to 12:00 a.m. Monday through Thursday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 3:00 p.m. or after 12:00 a.m. Monday through Thursday or anytime on Friday, Saturday or Sunday.

(3) Some state officers and state employees occupy positions that do not have fixed schedules with the same starting and ending times. For officers and employees who do not have fixed schedules, working hours are defined as either:

(a) The hours set forth in any policy on working hours adopted by an agency. Agencies have flexibility in determining working hours for the officers and employees to meet their unique needs so long as the time considered to be working hours is clearly established. If an agency does not adopt a working hours policy, working hours shall be 8:00 a.m. to 5:00 p.m. Monday through Friday when state agencies are generally open to the public; or

(b) The work schedule for an officer or employee approved by the agency, if it is different from the agency policy or, if the agency has not adopted a policy, 8:00 a.m. to 5:00 p.m. Monday through Friday.

Example 3: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. Although the agency is open to the public at these times, the work of the agency goes on twenty-four hours a day. The agency has adopted a working hours policy that divides working hours

into three shifts: the day shift (8:00 a.m. to 5:00 p.m.); swing shift (3:00 p.m. to 12:00 a.m.) and midnight shift (12:00 a.m. to 9:00 a.m.). An employee without a fixed schedule is assigned to the swing shift (3:00 p.m. to 12:00 a.m.) Monday through Friday. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 3:00 p.m. and sometimes after 3:00 p.m. Similarly, the employee may leave work before or after 12:00 a.m. This employee's working hours are 3:00 p.m. to 12:00 a.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 3:00 p.m. or after 12:00 a.m. Monday through Friday or on Saturday or Sunday.

Example 4: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 8:00 a.m. or after 5:00 p.m. Monday through Friday, or on Saturday or Sunday.

Example 5: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. Although the agency is open to the public at these times, the work of the agency goes on twenty-four hours a day. The agency has adopted a working hours policy that divides working hours into three shifts: the day shift (8:00 a.m. to 5:00 p.m.); swing shift (3:00 p.m. to 12:00 a.m.) and midnight shift (12:00 a.m. to 9:00 a.m.). An employee without a fixed schedule is assigned to the day shift (8:00 a.m. to 5:00 p.m.) Monday through Friday. However, the agency has approved a different work schedule for this employee. Instead of the usual day shift of 8:00 a.m. to 5:00 p.m., the employee works 7:00 a.m. to 4:00 p.m. Since the employee does not have a fixed schedule the employee, sometimes comes to work before 7:00 a.m. and sometimes after 7:00 a.m. Similarly, the employee may leave work before or after 4:00 p.m. This employee's working hours are 7:00 a.m. to 4:00 p.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 7:00 a.m. or after 4:00 p.m. Monday through Friday, or on Saturday or Sunday.

(4) Working hours do not include state legal holidays unless the officer's or employee's work schedule requires the officer or employee to work on a state legal holiday.

(1999 Ed.)

(5) Working hours do not include the time approved and designated for an officer's or employee's lunch break. A lunch break is between 12:00 p.m. and 1:00 p.m., unless the agency has designated a different time in a working hours policy or has approved a different lunch break as part of an officer's or employee's work schedule. If an officer or employee engages in campaign activity during the lunch break, the officer or employee may not make use of any of the facilities of the agency.

Example 6: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday with a lunch break between 12:00 p.m. and 1:00 p.m. The employee may assist in a campaign during the employee's lunch break between 12:00 p.m. and 1:00 p.m.

(6) Working hours do not include the time in official leave status if the leave has received advance documented or written authorization. An officer or employee on leave may assist in a campaign.

Example 7: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. On Friday the employee receives advance written authorization to be on leave for five days, Monday through Friday of the next week. The employee may assist in a campaign during this leave.

Example 8: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. In this agency employees without fixed schedules take leave during a month and then get written authorization for the leave at the end of the month. An employee takes leave Monday through Friday and assists in a campaign. At the end of the month the

employee obtains written authorization for the leave. The employee has assisted in a campaign during working hours since the employee did not obtain written authorization prior to taking leave to assist in a campaign. To assist in a campaign while on leave, the employee must obtain written authorization prior to going on leave.

(7) The definition of working hours also includes any time an officer or employee is actually working. For an officer or employee with a fixed schedule, working hours includes overtime when the officer or employee is working additional hours other than those in the fixed schedule. For an officer or employee without a fixed schedule, working hours include any time the officer or employee is working.

Example 9: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. On a Monday the employee works from 8:00 a.m. to 9:00 p.m. Even though the employee's working hours are 8:00 to 5:00 the time spent working between 5:00 p.m. and 9:00 p.m. are working hours because the employee is working for the agency during this time.

(8) The governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, commissioner of public lands, and the insurance commissioner are state officers in the executive branch subject to RCW 42.52.180. These officers are elected to office and hold office for a term of four years and until their successors are elected and qualified. Since these officers are elected to a term of office, they do not have working hours and may assist in a campaign at any time. However, if these officers do assist in a campaign, they may not make use of any facilities of an agency except as provided in RCW 42.52.180(2).

[Statutory Authority: RCW 42.52.180(1) and 42.52.360 (2)(b). 96-22-030, § 292-110-020, filed 10/30/96, effective 11/30/96.]

WAC 292-110-030 Measurable expenditure. (1) RCW 42.52.180(1) provides that no state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Facilities of an agency include, but are not limited to, use of stationery, postage, machines and equipment, use of state employees during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

(2) RCW 42.52.180(2) sets forth exceptions to the prohibition in RCW 42.52.180(1). The exceptions include a

statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry without an actual measurable expenditure of public funds (RCW 42.52.180 (2)(b)); activities that are part of the normal and regular conduct of the office (RCW 42.52.180 (2)(c)); and de minimis use of public facilities by state-wide elected officials incidental to the preparation or delivery of permissible communications initiated by the official regarding the official's views on a ballot proposition that may foreseeably affect a matter that falls within the official's constitutional or statutory responsibilities (RCW 42.52.180 (2)(d)).

(3) Elected officials regularly expend public funds to respond to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions. RCW 42.52.180 (2)(b) permits elected officials to respond to such inquiries regarding ballot propositions without an actual measurable expenditure of public funds. For purposes of RCW 42.52.180 (2)(b) measurable expenditure means an expenditure or separately identifiable cost or specific portion of a cost incurred by the agency beyond the normal and regular expenditures or costs incurred by the agency in responding to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions.

Example 1: A statewide elected official conducts a press conference in state office space. During the conference the official is asked about a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. The official replies to the question explaining his or her opinion on the ballot proposition and the reason for the opinion. It is not an ethical violation to reply to such an inquiry. The use of state office space, during the time the official answers the question about the ballot proposition, does not result in a measurable expenditure of public funds. This is because the expenditure or cost of the office space during this period is not a separately identifiable cost.

Example 2: A statewide elected official receives a letter from a constituent asking for the official's position on a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. The official replies by letter explaining his or her opinion on the ballot proposition and the reason for the opinion. In the course of preparing the reply the official has the assistance of staff and uses office space, equipment, stationery and postage. It is not an ethical violation to reply to such an inquiry. There is no measurable expenditure of public funds because the agency has not incurred a cost beyond the normal and regular costs incurred by the agency in responding to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions.

Example 3: A statewide elected official received a letter from a constituent asking for the official's position on a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. The official replies by letter

explaining his or her opinion on the ballot proposition and the reason for the opinion. In the course of preparing the reply the official has the assistance of staff and uses office space, equipment, stationery and postage. The official sends copies of the reply to other individuals on the agency mailing list. This is an ethical violation. While it is permissible to reply to the constituent who inquired about the official's position (Example 1), it is improper to send copies of the response to others. There is a measurable expenditure of public funds because the cost of the paper and postage for the additional copies is a separate identifiable cost beyond the normal and regular costs incurred by the agency in responding to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions.

Example 4: A statewide elected official writes a letter to the editor of a newspaper stating the official's position on a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. In the course of preparing the letter the official has the assistance of staff and uses office space, equipment, stationery and postage. This is an ethical violation. The official has used the facilities of the agency and the exception in RCW 42.52.180 (2)(b) does not apply because the official is not responding to an inquiry.

[Statutory Authority: RCW 42.52.180 (2)(b) and 42.52.360 (2)(b). 96-22-029, § 292-110-030, filed 10/30/96, effective 11/30/96.]

WAC 292-110-050 Advisory opinions. State officers and employees are encouraged to seek an advisory opinion whenever they have questions concerning ethical standards or potential conflicts of interest. Advisory opinions are intended to provide guidance to a state officer or state employee in advance of an action or decision and thereby prevent ethics violations.

(1) Whenever requested by a state officer, state employee, or other person, or whenever it deems it in the public interest, the board shall issue advisory opinions. Requests for advisory opinions, if not issued in response to a motion by the board, shall be written and signed, and addressed to either the chair of the board or the board secretary. Requests may be made by electronic mail. Each request should provide sufficient information and circumstances to enable the board to evaluate the request and issue the advisory opinion.

(2) Upon receiving a request for an advisory opinion, the board secretary shall, within fifteen calendar days of receipt, acknowledge the request. Persons requesting advisory opinions shall be notified of the status of the request at thirty day intervals until final action is taken.

(3) The board shall either:

(a) Deny the request and state the reason(s) for the denial; or,

(b) Issue a written advisory opinion.

(4) An advisory opinion is final when it has been approved by the board and is signed by the board secretary.

(1999 Ed.)

(5) A person requesting an advisory opinion may, upon receiving the opinion, petition the board for reconsideration within thirty days of the date the opinion is issued if the person believes that the opinion is erroneous in factual detail. A petition for reconsideration shall be written and signed, and shall briefly state the errors of fact. The board may deny the petition if it lacks merit, or if the person who submitted the request provided erroneous information to the board.

(6) If a state officer or state employee receives an advisory opinion and fails to make a good faith effort to follow its guidance, the board shall give this fact weight when considering a complaint alleging a violation based on the advice received.

(7) Informal staff analysis. It is the responsibility of the board secretary to provide ethics advice to any state officer, state employee, or other person; however, a state officer, state employee, or other person may only rely on written ethics advice. In providing such advice, the board secretary may issue a written nonbinding staff analysis. A nonbinding staff analysis is intended to provide ethics guidance and advice in an expeditious manner, but does not substitute for a formal advisory opinion from the board. The board secretary shall provide a disclaimer to the person requesting the nonbinding staff analysis that the advice is solely the opinion of the board secretary and not the opinion of the board or in any respect binding on the board. Only advisory opinions issued by the board and complaints decided by the board may be relied on for determining how the board will interpret a provision of the Ethics in Public Service Act.

(a) In considering a complaint alleging a violation, the board will give weight to the fact that the person charged in the complaint relied in good faith on written advice from the board secretary.

(b) The board may review staff analyses provided under this subsection and may approve or disapprove of any advice so provided. However, any such approval or disapproval is limited to whether staff had reasonable grounds for the advice and should not be interpreted as indicating approval or disapproval of the advice provided.

[Statutory Authority: RCW 42.52.360 (2)(b) and (c). 98-03-045, § 292-110-050, filed 1/15/98, effective 2/15/98.]

WAC 292-110-060 Compensation for outside activities and contracting with state agencies. (1) The primary purpose of the Ethics in Public Service Act is to prevent conflicts of interest that impair the impartial and independent judgment of state officers and employees. A conflict of interest may occur when a state officer or state employee accepts compensation for outside activities, and acceptance conflicts with the performance of official duties on behalf of the state and the citizens of Washington. Conflicts of interest occur whenever a state officer or state employee has a beneficial interest in a transaction with the state; accepts outside compensation for the performance or non-performance of an official duty; or, accepts or seeks outside compensation relating to a matter in which the officer or employee participated in an official capacity. A conflict of interest extends to those matters in which a state officer or employee exercises responsibility. Potential conflicts of interest relating to the receipt of compensation for outside activities may be resolved by seek-

ing the review and prior approval of the executive ethics board.

2) A state officer or employee may not receive anything of economic value under a contract or grant outside his or her official duties unless each of the following conditions is met:

(a) The contract or grant is legitimate and actually performed;

(b) The contract or grant is not within the state officer's or employee's official duties, is not under his or her supervision; is not created or authorized by the state officer or employee in an official capacity, and is not within an area of his or her official responsibility;

(c) The contract or grant is not performed for nor compensated by a person from whom the state officer or employee would not be able to accept a gift; and,

(d) The contract or grant would not require the disclosure of confidential or nonpublic information.

(3) A state officer or employee may not engage in a business or transaction or professional activity, or incur an obligation of any nature if such activities may conflict with the proper discharge of official duties.

(4) A state officer or employee may not enter into a contract or receive a grant, or have a beneficial interest in a contract or grant with a state agency unless all conditions in section two are met, and one of the following conditions are satisfied:

(a) The contract bid or grant application is awarded through an open and competitive bidding process and more than one bid or grant application is received; or

(b) If only one bid or application is received, or the process for awarding the contract or grant was not open and competitive, and the executive ethics board has advised that the employee's interest in the contract or grant is not in conflict with the proper discharge of the employee's official duties.

(5) Provided that the conditions in sections two and three are met, the following contracts are approved by the executive ethics board:

(a) A contract or grant whereby the state officer or state employee receives assistance through state programs or federal programs administered by the state when they are entitled to receive such assistance by law and on the same basis as similarly situated citizens, and when the officer or employee does not exercise discretionary judgement with regard to an assistance program for which he or she is otherwise eligible;

(b) A contract to perform teaching duties at a bona fide community college, vocational-technical school, or institution of higher learning, provided no state resources are used to perform the duties; there is no conflict with the performance of official duties; and the state officer or state employee did not use his or her official position to influence the contract of employment; and,

(c) A contract held by a spouse, in which the officer or employee has a beneficial interest, with a state agency, provided that the officer or employee did not participate in the contract.

(d) An employee who has a contract or grant or a beneficial interest therein which is approved by the board under section (5)(a)-(c) of this rule is not required to file a separate

application for approval of the contract under section (6). However, the employee is responsible for determining that the criteria in sections (2) and (3) are satisfied.

(e) An employee who is awarded a contract or grant under section (5)(a)-(c) of this rule shall file a copy of the contract with the board. However, if the employee's only interest is a beneficial interest, the contract need not be filed with the board.

(6) State officers and employees seeking the approval of the board for a contract, grant application, or outside employment shall provide the following information to the board secretary no later than thirty days prior to the commencement of the contract:

(a) A description of current official duties and responsibilities;

(b) A statement of the work to be performed and, a copy of the contract;

(c) The duration and dollar value of the contract, if applicable;

(d) A statement that no state resources will be used to perform the outside employment or to fulfill the contract or grant; and,

(e) A description of how the work will be performed without the use of state resources.

(7) The board secretary shall review the contract or grant application terms and related documents and may determine whether there could be a potential conflict. If the board secretary determines:

(a) There would be no potential conflict under sections two and three of this rule, the board secretary shall approve the contract or grant application.

(b) There could be a potential conflict under sections two and three of this rule, the board secretary shall refer the contract or grant application to the board for approval or disapproval.

(8) If a contract has been amended or the scope of work altered, and the effect of the amendment or alteration may create a potential conflict of interest under sections two and three of this rule, the employee must resubmit the contract to the board at least fifteen days prior to commencement of work under the amended or altered contract.

(9) If a series of substantially identical contracts or grants with a state agency is anticipated, the state officer or employee may request that the board preapprove such contracts or grants. Preapproval shall be effective for the period of one calendar year, after which the state officer or employee shall resubmit the request.

(10) The board secretary shall provide written notice of any action on a contract bid, grant application or request for outside employment within fifteen working days of the board's action.

(11) Final contracts reviewed under this rule shall be filed with the board secretary within thirty days of execution.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-04-001, § 292-110-060, filed 1/21/98, effective 2/21/98.]

Chapter 292-120 WAC**EXECUTIVE ETHICS BOARD—PENALTY RULES****WAC**

292-120-010	Purpose.
292-120-020	Board may impose sanctions.
292-120-030	Criteria for determining sanctions.
292-120-040	Payment of civil penalty.

WAC 292-120-010 Purpose. The purpose of this rule is to set out the criteria that the board may consider when imposing sanctions for a violation of chapter 42.52 RCW and the rules adopted under it.

[Statutory Authority: RCW 42.52.360 (2)(e)-(g). 97-07-058, § 292-120-010, filed 3/18/97, effective 4/18/97.]

WAC 292-120-020 Board may impose sanctions. If the board finds a violation of chapter 42.52 RCW or rules adopted under it, the board may impose one or more of the following sanctions:

(1) Reprimand, either by letter of instruction or formal reprimand;

(2) Recommend to the appropriate authorities suspension, removal from the position, or prosecution or other appropriate remedy;

(3) A civil penalty of up to five thousand dollars per violation or three times the economic value of any thing sought or received in violation of chapter 42.52 RCW or rules adopted under it, whichever is greater. Payment of the civil penalty shall be reduced by the amount of costs paid pursuant to subsection 5;

(4) Payment of damages sustained by the state that were caused by the violation and were not recovered by the state auditor;

(5) Costs, including reasonable investigative costs, that do not exceed the amount of any civil penalty;

(6) Recommend to the governor and the appropriate agency that they request the attorney general bring an action to cancel or rescind action taken by the violator, upon a board finding that:

(a) The violation has substantially influenced the state action; and

(b) Interests of the state require cancellation or rescission.

[Statutory Authority: RCW 42.52.360 (2)(e)-(g). 97-07-058, § 292-120-020, filed 3/18/97, effective 4/18/97.]

WAC 292-120-030 Criteria for determining sanctions. In determining the appropriate sanction, including the amount of any civil penalty, the board may consider the nature of the violation and the extent or magnitude or severity of the violation, including:

(1) The monetary cost of the violation including:

(a) The cost of the violation to the state;

(b) The value of anything received or sought in the violation;

(c) The amount of any damages incurred by the state as a result of the violation;

(d) The costs incurred in enforcement, including reasonable investigative costs;

(2) The nature of the violation including whether the violation:

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- (a) Was continuing in nature;
- (b) Was motivated by financial gain;
- (c) Involved criminal conduct;
- (d) Impaired a function of the agency;
- (e) Tended to significantly reduce public respect for or confidence in state government or state government officers or employees;
- (f) Involved personal gain or special privilege to the violator;
- (3) Aggravating circumstances including whether the violator:
 - (a) Intentionally committed the violation with knowledge that the conduct constituted a violation;
 - (b) Attempted to conceal the violation prior to the filing of the complaint;
 - (c) Was untruthful or uncooperative in dealing with the board or the board's staff;
 - (d) Had significant official, management, or supervisory responsibility;
 - (e) Had committed prior violations found by the board;
 - (f) Incurred no other sanctions as a result of the violation;
- (4) Mitigating factors including:
 - (a) Prior corrective action taken against the violator;
 - (b) Prior recovery of damages to the state;
 - (c) The unethical conduct was approved or required by the violator's supervisor or agency;
 - (d) The violation was unintentional;
 - (e) Other mitigating factors deemed relevant by the board.
- (5) For purposes of this section, each act which violates one or more provisions of chapter 42.52 RCW, or rules adopted under it, may constitute a separate violation.

[Statutory Authority: RCW 42.52.360 (2)(e)-(g). 97-07-058, § 292-120-030, filed 3/18/97, effective 4/18/97.]

WAC 292-120-040 Payment of civil penalty. Payment of any monetary penalty assessed by the board must be made within 45 days of the date of the board's order, unless an extension is granted by the board.

[Statutory Authority: RCW 42.52.360 (2)(e)-(g). 97-07-058, § 292-120-040, filed 3/18/97, effective 4/18/97.]

Chapter 292-130 WAC

AGENCY ORGANIZATION—PUBLIC RECORDS

WAC

292-130-010	Purpose.
292-130-020	Function—Organization—Office.
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WAC 292-130-010 Purpose. The purpose of this chapter is to provide rules implementing RCW 34.05.220 and 42.17.250 through 42.17.320 for the executive ethics board.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-010, filed 11/3/98, effective 12/4/98.]

WAC 292-130-020 Function—Organization—Office. The executive ethics board was created by chapter 42.52 RCW to enforce the state's ethics law and rules adopted under it with respect to state-wide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

The executive ethics board consists of five members, appointed by the governor as follows: One member shall be a classified service employee; one member shall be a state officer or state employee in an exempt position; one member shall be a citizen selected from a list of three names submitted by the attorney general; one member shall be a citizen selected from a list of three names submitted by the state auditor; and, one member shall be a citizen at large selected by the governor.

The board's administrative office is located at 1125 Washington Street SE, 6th Floor, P.O. Box 40100, Olympia, Washington, 98504-0100. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday except legal holidays and during regularly scheduled board meetings.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-020, filed 11/3/98, effective 12/4/98.]

WAC 292-130-030 Operations and procedures. Board members meet the second Friday of each month, except for the months of August and December, at such times and places as are deemed necessary for the conduct of agency business. All meetings are conducted in accordance with the Open Public Meetings Act (chapter 42.30 RCW). Three members of the board constitute a quorum. Any matter coming before the board may be decided by a majority vote of those members present and voting. Minutes shall be taken at all meetings.

The board issues advisory opinions; develops education and training materials; investigates, hears, and determines complaints; reviews and approves agency ethics policies; and, reviews, approves, or denies contracts between state officers and employees and state agencies.

Written communications intended for board consideration or action shall be filed with the administrative office.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-030, filed 11/3/98, effective 12/4/98.]

WAC 292-130-040 Executive secretary. The executive secretary shall perform the following duties under the general authority and supervision of the board:

- (1) Act as records officer and administrative arm of the board.
- (2) Coordinate the policies of the board and the activities of board staff.
- (3) Act as a liaison between the board and other public agencies.

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(4) Conduct ethics training and information outreach.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-040, filed 11/3/98, effective 12/4/98.]

WAC 292-130-050 Public records—Availability. Public records are available for inspection and copying except as otherwise provided by RCW 42.17.310 and chapter 292-100 WAC.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-050, filed 11/3/98, effective 12/4/98.]

WAC 292-130-060 Index. The board has indexed by subject matter the advisory opinions of the board. The index is maintained in the administrative office and is accessible at the board's web site located at www.wa.gov/ethics.

The volume of correspondence managed by the office is such that it would be unduly burdensome to formulate and maintain an index of all correspondence. In lieu of an index, the following filing system is utilized at the board's administrative office:

- (1) Complaints received by the board are indexed by year, number, name of the respondent and agency.
- (2) Whistleblower referrals from the state auditor are indexed by whistleblower case number.
- (3) Contract approvals are filed by year and name of the state employee.
- (4) Agency ethics policies are filed by agency name.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-060, filed 11/3/98, effective 12/4/98.]

WAC 292-130-070 Public records—Officer. The public records officer for the administrative office shall be the executive secretary to the board.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-070, filed 11/3/98, effective 12/4/98.]

WAC 292-130-080 Hours for seeking public records. Public records shall be available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays and during regularly scheduled board meetings.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-080, filed 11/3/98, effective 12/4/98.]

WAC 292-130-090 Requests for public records. Chapter 42.17 RCW requires that agencies protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency; therefore, public records may be inspected or copied or copies of such records obtained, upon compliance with the following procedure:

- (1) A request shall be made in writing either via electronic mail or in writing upon a form prescribed by the administrative office. The form shall be presented to the public records officer, or to a member of the staff designated by him or her if the public records officer is not available, during office hours. The request shall include:
 - (a) The name of the person requesting the record;
 - (b) The calendar date on which the request was made;
 - (c) A description of the record or records requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or designated staff member to whom the request is made to assist in appropriately identifying the public record or public records requested.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-090, filed 11/3/98, effective 12/4/98.]

WAC 292-130-100 Response to public records requests. (1) The administrative office shall respond promptly to requests for disclosure. Within five business days of receiving a public records request, the office will respond by:

(a) Providing the record;

(b) Acknowledging that the office has received the request and providing a reasonable estimate of the time the office will require to respond to the request; or

(c) Denying the public records request.

(2) Additional time for the office to respond to a request may be based upon the need to:

(a) Clarify the scope of the request;

(b) Locate and assemble the information requested;

(c) Notify third persons who may be named in a record; or

(d) Determine whether any or all of the information requested is exempt and that a denial should be made as to all or part of the request.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-100, filed 11/3/98, effective 12/4/98.]

WAC 292-130-110 Copying fees. No fees shall be charged for the inspection of public records. The office will charge one dollar for the first ten pages and ten cents per copy for additional pages for requests made under this chapter. The public records officer may waive the fees for copies when the expense of processing the payment exceeds the cost of providing the copies. These charges are necessary to reimburse the office for the costs of providing copies of public records and use of the copying equipment. The office may require that all charges be paid in advance of release of the copies.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-110, filed 11/3/98, effective 12/4/98.]

WAC 292-130-120 Protection of public records. (1) No person shall knowingly alter, deface, or destroy public records of the office.

(2) Original copies or portions thereof of public records of the office shall not be removed from the premises.

(3) Care and safekeeping of public records of the office, furnished pursuant to a request for inspection or copying, shall be the sole responsibility of the requestor.

(4) Records furnished for public inspection or copying shall be returned in good condition and in the same sequence or organization as when furnished.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-120, filed 11/3/98, effective 12/4/98.]

WAC 292-130-130 Exemptions. (1) The administrative office reserves the right to determine that a public record

requested in accordance with the procedures outlined in WAC 292-130-060 is exempt under the provisions of RCW 42.17.310.

(2) In addition, pursuant to RCW 42.17.260(1), the office reserves the right to delete identifying details when it makes available or publishes any public record in any cases where there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(3) Any denial of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-130, filed 11/3/98, effective 12/4/98.]

WAC 292-130-140 Review of denials of public records request. (1) Any person who objects to a denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the chair of the board. The chair shall immediately consider the matter and either affirm or reverse such denial or call a special meeting of the board as soon as legally possible to review the denial.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-140, filed 11/3/98, effective 12/4/98.]